

HUMAN RIGHTS WATCH

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HUMAN
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Division of Global Migration and Quarantine
Centers for Disease Control and Prevention
United States Department of Health and Human Services
Attn: Part 34 NPRM Comments
1600 Clifton Road, NE, MSE-03
Atlanta, Georgia 30333

*Also submitted online at: <http://regulations.gov>
And via email to: Part34HIVcomments@cdc.gov*

Re: Docket No. CDC-2008-0001: Medical Examination of Aliens –
Removal of Human Immunodeficiency Virus (HIV) Infection from Definition
of Communicable Disease of Public Health significance

Dear Secretary Sebelius:

Human Rights Watch appreciates the opportunity to comment on the proposal to amend 42 CFR section Part 34.2 to remove Human Immunodeficiency Virus (HIV) from the list of “communicable diseases of public health significance” and to amend 42 CFR section Part 34.3 to remove the HIV testing requirement from the routine medical examination of foreign nationals.¹ These restrictions violate the fundamental rights of people living with HIV, and impede HIV prevention, care, and treatment efforts among all people in the US, including residents. We strongly urge the Department of Health and Human Services (HHS) to move swiftly to remove HIV-related restrictions on entry, stay, and residence so that United States (US) policy conforms to international human rights law and public health standards, principles, and practices.

Human Rights Watch is an independent, non-governmental organization, founded in 1978, that monitors human rights violations in more than eighty countries around the world. Since 2001, Human Rights Watch has been monitoring human rights violations in the context of the global HIV/AIDS epidemic, including those linked to national restrictions on entry, stay, and residence in countries as diverse as South Korea, the Russian Federation, and the United States.² Human Rights Watch submits these comments in

¹ Examination of Aliens—Removal of Human Immunodeficiency Virus (HIV) Infection From Definition of Communicable Disease of Public Health Significance; Proposed Rule, Federal Register, Docket No. CDC-2008-0001, vol. 74, no. 126, July 2, 2009, p. 31801, http://www.access.gpo.gov/su_docs/fedreg/a090702c.html (accessed July 20, 2009).

² See Joseph J Amon and Katherine Wiltenburg Todrys, “Fear of Foreigners: HIV-related restrictions on entry, stay, and residence”, *Journal of the International AIDS Society*, vol. 11:8, December 16, 2008 <http://www.jiasociety.org/content/11/1/8>; Human Rights Watch, *Discrimination, Denial and Deportation: Human Rights Abuses Affecting Migrants Living with HIV*, June 2009, <http://www.hrw.org/node/83653>; Letter from Joseph Amon, director, Health and Human Rights Division, Human Rights Watch, to National Human Rights Commission of Korea, June 19, 2009, <http://www.hrw.org/en/news/2009/04/09/letter->

an effort to highlight the international human rights and public health concerns implicated by the HIV-related travel restrictions.

I. HIV-related restrictions on entry, stay and residence: the “HIV ban”

The US has excluded non-citizens living with HIV from admission to the US as a matter of law or policy for more than two decades, first as a “dangerous contagious disease,” and then as a “communicable disease of public health significance.” Until last year, the Immigration and Nationality Act (INA) required HHS to include HIV on its list of communicable diseases. In 2008, Congress amended the INA to strike the specific mention of HIV as a grounds of inadmissibility, restoring jurisdiction to HHS to make this determination.”³

The current regulations, commonly referred to as the “HIV ban,” bar non-citizens living with HIV from entering the United States, even if they are only transiting through the US.⁴ They also bar HIV-positive non-citizens from becoming permanent residents, except in limited circumstances.⁵ Waivers are available to some, but not all, HIV-positive foreign nationals, but the application process is burdensome and the waivers are often difficult to obtain.⁶

Current policy also requires that applicants for permanent residence undergo HIV testing.⁷ Human Rights Watch agrees with HHS that the scope of mandatory medical examinations is

department-health-and-human-services; Human Rights Watch, *Are You Happy to Cheat Us?: Exploitation of Migrant Construction Workers in Russia*, February 10, 2009, <http://www.hrw.org/en/reports/2009/02/09/are-you-happy-cheat-us-o>; *Family Unvalued, Discrimination, Denial, and the Fate of Binational Same-Sex Couples under U.S. Law*, May 1, 2006, <http://www.hrw.org/en/reports/2006/05/01/family-unvalued-o>.

³ (see 42 CFR 34.2(b)).

⁴ Examination of Aliens—Removal of Human Immunodeficiency Virus (HIV) Infection From Definition of Communicable Disease of Public Health Significance; Proposed Rule, Register, Docket No. CDC–2008–0001, vol. 74, no. 126, July 2, 2009, p. 31801, http://www.access.gpo.gov/su_docs/fedreg/a090702c.html (accessed July 20, 2009). For information on the HIV ban's harmful effects on families and individuals, see Human Rights Watch/Immigration Equality, *Family Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples under U.S. Law*, May 1, 2006, <http://www.hrw.org/en/reports/2006/05/01/family-unvalued-o>.

⁵ Immigration and Nationality Act, 1952, <http://www.uscis.gov/propub/ProPubVAP.jsp?dockey=c9fef57852dco66cfe16a4cb816838a4> (accessed August 3, 2009), 212(a)(1)(A)(i), states that foreign nationals who have “communicable diseases of public health significance” are inadmissible, meaning that they are barred from entering the U.S. or obtaining lawful permanent residence.

⁶ See Immigration Equality, HIV Waivers, <http://www.immigrationequality.org/template.php?pageid=177> (accessed August 3, 2009). HIV-positive adult married sons and daughters of US. Citizens and HIV-positive siblings of US citizens are eligible to apply for family-based visas, but ineligible for HIV waivers. See US Department of State, Visa Bulletin, http://travel.state.gov/visa/frvi/bulletin/bulletin_4539.html (accessed August 3, 2009). In some cases, applicants for HIV waivers must give up the right to seek any change or adjustment of status (unless applying for asylum) as a condition of entry to the US. See Immigration and Nationality Act 212(a)(1)(A)(i) Waiver Certification, http://www.usembassy.org.uk/cons_new/visa/forms/DS-5512.pdf (HIV waiver for short-term visits) (accessed August 3, 2009). The Defense of Marriage Act prohibits federal recognition of same sex marriages, and bars foreign nationals living with HIV from applying for residence based on their spousal relationship with a same sex partner; and the US partners of those who otherwise qualify for residency status (for example, through an employment relationship) are not considered “qualifying relatives” to support an HIV waiver. See The Defense of Marriage Act, Public Law 104-199, 1996, <http://thomas.loc.gov/cgi-bin/bdquery/z?d104:h.r.03396> (accessed August 3, 2009).

⁷ 42 Code of Federal Regulations Part 34 – Medical Examination of Aliens (1991) http://edocket.access.gpo.gov/cfr_2003/octqtr/42cfr34.1.htm (accessed August 4, 2009). Applicants seeking non-immigrant visas are generally not required to undergo a medical exam or take an HIV test, but if the government suspects they have HIV, it can require an HIV-test. See comment from Joseph Amon, director, Health and Human Rights Division, Human Rights Watch, to the proposed federal rule change entitled “Issuance of a Visa and Authorization for Temporary Admission into the United States for Certain Non-immigrant Aliens Infected with HIV” (Docket # USCBP-2007-0084, Fr. Doc. E7-21841.) People entering

limited to specific screening and testing for those diseases that meet the definition of “communicable disease of public health significance.”⁸ Therefore, once HIV is removed from this definition, HIV testing must be removed from the routine medical exam.

II. Human Rights and Public Health Concerns Raised by the HIV Ban

HHS states in its own justification for the proposed rule that ending the HIV ban will “remove a government-imposed barrier . . . that is at odds with human rights considerations,”⁹ noting specifically that it is intended “to bring the U.S. in line with current science and international standards of public health and human rights practice,”¹⁰ by, among other things, reducing stigma and discrimination against people living with HIV and promoting family unity.¹¹ We agree.

A. *The HIV ban violates fundamental human rights protections*

National restrictions on entry, stay, and residence for persons living with HIV broadly violate international human rights law provisions banning discrimination and upholding equality before the law.¹² Following the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) (to which the US is a party) guarantees all persons the right to equal protection of the law without discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, property birth or other status.¹³ The former United Nations High Commission on Human Rights (UNHCHR) has interpreted this provision to include discrimination based on actual or presumed HIV/AIDS status.¹⁴ States must respect this right for all individuals within their territory and subject to their jurisdiction,¹⁵ regardless of their citizenship.¹⁶

the US with HIV medications in their luggage can be questioned or expelled. See Nathan Schaefer, “People With HIV Not Welcome Here” *The Body* Summer 2008, <http://www.thebody.com/content/art47485.html> (accessed August 3, 2009).

⁸ U.S. Centers for Disease Control and Prevention, “Technical Questions and Answers, Proposed Removal of HIV Entry Ban: Revision to 42 CFR Part 34: Medical Examination of Aliens Removing HIV infection as a “Communicable Disease of Public Health Significance” for immigration admission into the United States Notice of Proposed Rule Making”, July 2, 2009, http://www.cdc.gov/ncidod/dq/laws_regs/fed_reg/remove-hiv/hiv_faq-technical.htm (accessed August 3, 2009).

⁹ Examination of Aliens—Removal of Human Immunodeficiency Virus (HIV) Infection From Definition of Communicable Disease of Public Health Significance; Proposed Rule, Federal Register, Docket No. CDC-2008-0001, vol. 74, no. 126, July 2, 2009, p. 31801, http://www.access.gpo.gov/su_docs/fedreg/a090702c.html (accessed July 20, 2009).

¹⁰ *Ibid.*, p. 31804.

¹¹ *Ibid.*, pp. 31801, 31804.

¹² Universal Declaration of Human Rights, declared December 10, 1948, G.A. Res. 217A (III), art. 7(1). See also International Covenant on Civil and Political Rights, adopted December 16, 1966, G.A. Res. 2200A (XXI), entered into force in the US June 8, 1992, art. 2. See also International Convention on the Elimination of All Forms of Racial Discrimination, adopted December 21, 1965, G.A. Res. 2106 (XX), entered into force in the US October 5, 1977.

¹³ International Covenant on Civil and Political Rights, art. 26.

¹⁴ United Nations High Commissioner for Human Rights (UNHCHR), “The Protection of Human Rights in the Context of Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS),” Resolution 1995/44, March 3, 1995. <http://www.unhcr.ch/Huridocda/Huridoca.nsf/o/47a2677e0c36688c8025676300599ece?Opendocument>.

¹⁵ UNHCHR, General Comment 18, Non-discrimination (1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 (1994), p. 26. UN Human Rights Committee, General Comment 15, The position of aliens under the Covenant (Twenty-seventh session, 1986), Compilation of General Comments and General Commendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/ GEN/1/Rev.1 at 18 (1994).

The Human Rights Committee, the ICCPR's monitoring body, has noted that while "[i]t is in principle a matter for the State to decide who it will admit to its territory... in certain circumstances, an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise."¹⁷ Human rights bodies, such as the European Court of Human Rights, have concluded that states have little freedom to implement entry and residence policies and laws that clearly discriminate against particular groups.¹⁸

Restrictions against entry, stay, and residence based on HIV status also run contrary to related human rights principles. As the Joint United Nations Programme on HIV/AIDS (UNAIDS) has noted, the implementation of these restrictions has regularly violated the human rights principle of *non-refoulement* (which bars unlawful return) of refugees,¹⁹ obligations to protect the family, protection of the best interests of the child, the right to privacy, the right to freedom of association, the right to information, and the rights of migrant workers.²⁰ These restrictions also affect the individual's rights to seek asylum, to work, to education, to the highest attainable standard of health, to dignity, and to life. Furthermore, mandatory HIV testing and disclosure are impermissible under international law²¹ and have been condemned by UNAIDS, the World Health Organization (WHO), and the UNHCHR as violations of the right to privacy and counterproductive to effective HIV/AIDS control.²² Standards for HIV testing must be based on human rights and ethical practices. The UNAIDS/WHO Policy on HIV testing states that testing must be "confidential, accompanied by counseling, and conducted with informed consent, meaning that it is both informed and voluntary."²³ Mandatory testing also puts foreign nationals at increased risk of violence and other abuse, both in the US and their countries of origin, as they risk unauthorized disclosure of their HIV status by government officials, and private actors.

¹⁶ UNHCHR, General Comment 15, The Rights of Aliens under the ICCPR, HRI/GEN/1/Rev.7 (1986), para. 9 and para. 5, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/bc561aa81bc5d86ec12563ed004aaa1b?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bc561aa81bc5d86ec12563ed004aaa1b?Opendocument) (accessed July 27, 2009).

¹⁷ Human Rights Committee, "General Comment No. 18: Non-Discrimination," 1989. Human Rights Committee, "General Comment No. 15: The Position of Aliens Under the Covenant," 1986

¹⁸ European Court of Human Rights, *East African Asians v. United Kingdom*, Judgment of 15 December 1973, 3 EHRR 76 available at <http://www.echr.coe.int/echr/>. *Abdulaziz, Cabales and Balkandali v. United Kingdom*, Judgment of 24 April 1985, 7 EHRR 471 available at <http://www.echr.coe.int/echr/>.

¹⁹ Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Joint United Nations Programme on HIV/AIDS (UNAIDS), "International Guidelines on HIV/AIDS and Human Rights," 2006, http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf (accessed August 3, 2009).

²⁰ UNAIDS and International Organization for Migration (IOM), "UNAIDS/IOM Statement on HIV/AIDS-Related Travel Restrictions," 2004, http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/activities/health/UNAIDS_IOM_statement_travel_restrictions.pdf (accessed August 4, 2009).

²¹ UNHCHR, "Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights," E/CN.4/1985/4, September 1984, <http://www.unhcr.org/refworld/docid/4672bc122.html> (accessed August 4, 2009). UNAIDS and IOM, "UNAIDS/IOM Statement on HIV/AIDS-Related Travel Restrictions."

²² UNAIDS and IOM, "UNAIDS/IOM Statement on HIV/AIDS-Related Travel Restrictions," 2004, http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/activities/health/UNAIDS_IOM_statement_travel_restrictions.pdf (accessed August 4, 2009); OHCHR and UNAIDS, "International Guidelines on HIV/AIDS and Human Rights," 2006, http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf (accessed August 3, 2009).

²³ UNAIDS and World Health Organization (WHO), "UNAIDS/WHO Policy Statement on HIV Testing," 2004, http://www.who.int/ethics/topics/en/hivtestingpolicy_who_unaids_en_2004.pdf (accessed July 31, 2009).

All HIV testing should be done to promote better health, not for exclusionary or punitive purposes. Ensuring that all HIV testing is confidential, conducted with informed consent, and accompanied by counseling is widely recognized as integral to effective HIV prevention and treatment strategies.

B. The HIV ban is not justified as a public health measure

According to international human rights law, to avoid being classified as impermissible discrimination, any difference in treatment that has a negative impact on a particular group (e.g. persons living with HIV or AIDS) has to be justified as necessary to achieve a compelling purpose and be the least restrictive (meaning least discriminatory) means of achieving that purpose.²⁴ However, while preservation of public health is a compelling purpose that might justify some forms of restrictions, HIV-related distinctions in entry, stay, and residence do not actually protect public health, and are too broad and coercive²⁵ to be the least restrictive means to achieve this end.²⁶

As the HHS comments acknowledge, the international community has recognized for some years that there is no public health justification for excluding people living with HIV from entry stay, or residence.²⁷ The WHO first concluded in 1987 that screening international travelers for HIV was not an effective strategy to prevent the spread of HIV²⁸ and advised in 1988 that such screening would be impractical and wasteful.²⁹ The Office of the United Nations High Commissioner for Human Rights and UNAIDS have unequivocally stated that "any restrictions on these rights [to liberty of movement and choice of residence] based on suspected or real HIV status alone, including HIV screening of international travelers, are discriminatory and cannot be justified by public health concerns"³⁰ since while HIV is infectious, it cannot be transmitted through casual contact.³¹ Those countries without HIV-

²⁴ UNHCR, "Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights," E/CN.4/1985/4, September 1984, <http://www.unhcr.org/refworld/docid/4672bc122.html> (accessed August 4, 2009). UNAIDS and IOM, "UNAIDS/IOM Statement on HIV/AIDS-Related Travel Restrictions," 2004, http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/activities/health/UNAIDS_IOM_statement_travel_restrictions.pdf (accessed August 4, 2009).

²⁵ OHCHR and UNAIDS, "International Guidelines on HIV/AIDS and Human Rights," 2006, http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf (accessed August 3, 2009).

²⁶ UNAIDS and IOM, "UNAIDS/IOM Statement on HIV/AIDS-Related Travel Restrictions," 2004, http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/activities/health/UNAIDS_IOM_statement_travel_restrictions.pdf (accessed August 4, 2009). Andreas Schloenhardt, "From Black Death to Bird Flu: Infectious Diseases and Immigration Restrictions in Asia," *New England Journal of International & Comparative Law*, vol. 12, no. 2, 2006, pp. 33-64.

²⁷ Examination of Aliens—Removal of Human Immunodeficiency Virus (HIV) Infection From Definition of Communicable Disease of Public Health Significance; Proposed Rule, Federal Register, Docket No. CDC-2008-0001, vol. 74, no. 126, July 2, 2009, p. 31800, 31803-4 http://www.access.gpo.gov/su_docs/fedreg/a090702c.html (accessed July 20, 2009).

²⁸ WHO, "Report: Consultation on International Travel and HIV Infection," WHO/SPA/GLO/787.1, 1987, <http://unesdoc.unesco.org/Ulis/cgi-bin/ulis.pl?catno=76034&gp=o&lin=1> (accessed August 4, 2009).

²⁹ WHO, "Statement on Screening of International Travelers for Infection with Human Immunodeficiency Virus," WHO/GPA/INF/88.3, 1988.

³⁰ OHCHR and UNAIDS, "International Guidelines on HIV/AIDS and Human Rights," 2006, http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf (accessed August 3, 2009).

³¹ UNAIDS and IOM, "UNAIDS/IOM Statement on HIV/AIDS-Related Travel Restrictions," 2004, http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/activities/health/UNAIDS_IOM_statement_travel_restrictions.pdf (accessed August 4, 2009). See also Center for Disease Control and Prevention, "Can I get HIV from casual contact (shaking hands, hugging, using a toilet, drinking from the same glass, or the sneezing and coughing of an infected person)?", 2007, <http://www.cdc.gov/hiv/resources/qa/qa31.htm> (accessed August 4, 2009).

related entry, stay, and residence restrictions have not reported any negative public health consequences.³²

Public health officials within the US have also recognized, for some years, that there is no public health rationale for restricting the entry, stay, and residence of people living with HIV. In January 1991, commenting on its proposal to remove HIV-related restrictions, HHS stated, "[t]he risk of (or protection from) HIV infection comes not from the nationality of the infected person, but from the specific behaviors that are practiced. Again, a careful consideration of epidemiological principles and current medical knowledge leads us to believe that allowing HIV-infected aliens into this country will not impose a significant additional risk of HIV infection to the US population, where prevalence of HIV is already widespread."³³

Indeed, rather than preserving public health and containing the spread of HIV, the HIV ban impedes effective responses to HIV by fostering misinformation and reinforcing stigma and discrimination against migrant persons living with HIV.³⁴ The HIV ban lends credence to the idea that non-nationals are a danger from which the national population must be protected,³⁵ prejudicially implies that persons living with HIV will act irresponsibly in transmitting the infection,³⁶ discourages testing and disclosure,³⁷ further isolates and endangers the lives of HIV-positive individuals,³⁸ and disproportionately targets individuals from poor countries.³⁹ It creates a false sense of security in US nationals that only migrants are at risk for HIV,⁴⁰ and that border control rather than other means of prevention will curb the spread of HIV/AIDS.⁴¹

³² Greater Involvement of People Living with HIV/AIDS, "Entry Denied: Denying Entry, Stay and Residence Due to HIV Status: Ten Things You Need to Know," 2008, http://www.iasociety.org/Web/WebContent/File/travel_restrictions_English (accessed June 17, 2009).

³³ See Examination of Aliens—Removal of Human Immunodeficiency Virus (HIV) Infection From Definition of Communicable Disease of Public Health Significance; Proposed Rule, Federal Register, Docket No. CDC-2008-0001, vol. 74, no. 126, July 2, 2009, p. 31801 http://www.access.gpo.gov/su_docs/fedreg/a090702c.html (citing 1991 comments) (accessed July 20, 2009).

³⁴ International AIDS Society (IAS), "IAS Policy Paper: Banning Entry of People Living with HIV/AIDS," 2007, http://www.iasociety.org/Web/WebContent/File/ias_policy%20paper_07%2012%2007.pdf (accessed June 17, 2009).

³⁵ All-Party Parliamentary Group on AIDS, "Improving Lives in Britain: An Inquiry into the Impact of the UK Nationality and Immigration System on People Living with HIV", 2003, <http://www.appg-aids.org.uk/publications.htm> (accessed August 4, 2009).

³⁶ Susan Timberlake, "Travel Restrictions on People Living with HIV: Going Against the Grain of Human Rights and Public Health", XVII International AIDS Conference, Mexico, August 2008.

³⁷ UNAIDS and IOM, "UNAIDS/IOM Statement on HIV/AIDS-Related Travel Restrictions", 2004, http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/activities/health/UNAIDS_IOM_statement_travel_restrictions.pdf (accessed August 4, 2009).

³⁸ All-Party Parliamentary Group on AIDS, "Migration and HIV: Improving Lives in Britain", 2003, <http://www.appg-aids.org.uk/publications.htm> (accessed August 4, 2009).

³⁹ Nathan Schaefer, "People With HIV Not Welcome Here", *The Body*, Summer 2008, <http://www.thebody.com/content/art47485.html>. (accessed August 3, 2009).

⁴⁰ All-Party Parliamentary Group on AIDS, "Migration and HIV: Improving Lives in Britain", 2003, <http://www.appg-aids.org.uk/publications.htm> (accessed August 4, 2009); See also Maria Gańczak et al., "Break the Silence: HIV/AIDS Knowledge, Attitudes, and Educational Needs Among Arab University Students in United Arab Emirates," *Journal of Adolescent Health*, vol. 40(6), 2007, pp. 572.e1-572.e8.

⁴¹ Working Group 1 of AIDS and Mobility in Europe, "HIV/AIDS and Migration in European Printed Media: An Analysis of Daily Newspapers," 2006.

III. The HIV ban undermines US leadership in the fight against HIV, and denies the US and its residents countless opportunities to work, study, and engage with HIV-positive foreign nationals

United Nations member states have universally recognized, time and again, that people living with HIV play a central role in mounting an effective response to HIV/AIDS. It has further determined that protecting the human rights of people living with HIV is critical to ensuring their greater involvement and participation in the development and implementation of successful efforts to fight HIV, and ensure access to treatment and care.⁴² Notwithstanding this knowledge, the HIV ban has kept the US from meeting this commitment by keeping countless people living with HIV, including leading experts, from coming to the US to share their work and experiences, and preventing HIV positive non-citizens from coming to the US to receive training applicable to implementing HIV/AIDS programs in their home countries.

In June 2009, for example, 60 HIV positive members of the Canadian delegation were barred from participating in the North American Housing and HIV/AIDS Research Summit IV in Washington, DC because they were unable to obtain timely waivers to enter the US.⁴³ Many other individuals and experts simply do not apply for an HIV waiver for fear of disclosure and a violation of their rights to privacy.⁴⁴

The HIV ban also has damaged the US reputation as a world leader in the fight against HIV. Since 1993, for example, the International AIDS Society (IAS) has, as a matter of policy, refused to hold its biannual International AIDS Conference, the world's largest conference in the field of health and development, in the US because the HIV ban denies the full participation of people living with HIV in such conferences.⁴⁵ The IAS has expressed interest in hosting their 2012 conference in Washington, D.C., but only if the US removes the HIV ban.⁴⁶

IV. HHS must work with the Department of Homeland Security and the Department of State to ensure information regarding amendments to HIV-related entry, stay, and residence are widely publicized

HHS must work with other relevant US government agencies to ensure that information about changes to HIV-related entry, stay, and residence restrictions is broadly disseminated

⁴² See UN Document A/RES/S-26/2, http://data.unaids.org/publications/irc-pub03/aidsdeclaration_en.pdf, paras. 33, 94, 102; UN Document A/RES/S-26/2, http://data.unaids.org/pub/Report/2006/20060615_HLM_PoliticalDeclaration_ARES60262_en.pdf, paras. 15, 20; Paris Declaration, Dec. 1, 1994, online at <http://www.ecpp.co.uk/parisdeclaration.htm>.

⁴³ "Barred! Up to 60 Canadians Living With HIV Denied Entry to U.S.; AIDS Groups Outraged," Housing Works, AIDS Issues Update, May 2009, <http://www.thebody.com/content/news/art51925.html>. (accessed July 27, 2009).

⁴⁴ Nathan Schaefer, "People With HIV Not Welcome Here," *The Body*, Summer 2008, <http://www.thebody.com/content/art47485.html>. (accessed August 3, 2009).

⁴⁵ IAS, "IAS Policy Paper: HIV-specific Travel and Residence Restrictions," http://www.iasociety.org/Web/WebContent/File/ias_policy%20paper.pdf (accessed August 4, 2009). See also Gay Men's Health Crisis, "Undermining Public Health and Human Rights: The United States HIV travel and immigration ban," March 2009, http://www.gmhc.org/policy/federal/2009/undermining_phhr.pdf (accessed July 27, 2009), p. 3.

⁴⁶ IAS, "IAS Investigates Washington D.C. as Host of 2012 International AIDS Conference," June 11, 2009, <http://www.iasociety.org/Default.aspx?pagelD=345> (accessed July 13, 2009).

to government officials as well as foreign nationals, and that relevant immigration forms are updated to reflect policy changes. This will require, among other things, working closely with the Department of Homeland Security and the Department of State, which are responsible for creating immigration forms. This is critical to comply with international human rights obligations to protect the right to seek, receive, and impart information.⁴⁷

Once HIV is removed from the list of communicable diseases of public health significance, HHS must take additional measures to ensure that foreign nationals who have been denied entry, stay, or residence based on their HIV status do not face bias or discrimination by immigration processors when they reapply for admission, stay, or residence. Human Rights Watch urges HHS to adopt clear policy guidance regarding the removal of the HIV ban and related restrictions on entry, stay, or residence, and to provide training to immigration officials charged with interpreting or implementing the new policy. In addition, for the new policy change to be effective the I-693 Form (Report of Medical Examination and Vaccination Record) mandating HIV status disclosure also must be changed concurrent with the removal of the HIV ban.

Human Rights Watch also urges HHS as a matter of priority to inform the public and foreign nationals seeking to enter or remain in the US of the policy change. Since the HIV ban has been in place for more than two decades, immigration processors must be trained and educated on the removal of the ban in order to ensure that old discriminatory practices do not continue.

The US is one of only twelve countries worldwide that ban HIV positive people from entry for any reason or length of time.⁴⁸ Recognizing two decades of public health and human rights guidance, it is past time to remove this unjustifiable and discriminatory barrier.

We thank HHS for the opportunity to offer comments on the proposed regulation to remove HIV from the list of Communicable Diseases of Public Health Significance, and hope that our recommendations will be of assistance in consideration of this critical regulatory change.

Yours sincerely,

, Health and Human Rights Division
Human Rights Watch

⁴⁷ International Covenant on Civil and Political Rights, art 19(2).

⁴⁸UNAIDS, "HIV-related travel restrictions," 2008, http://www.unaids.org/en/KnowledgeCentre/Resources/FeatureStories/archive/2008/20080304_HIVrelated_travel_restrictions.asp See also <http://eatg.org> (accessed July 31, 2009).